IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1101 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHABBIR HAJIBHAI SHAIKH - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

Appearance :
MR EE SAIYED for Applicant(s) : 1,MR SIKANDER SAIYED for Applicant(s) : 1,
Mrs. Hansa B. Punani Addl.Public Prosecutor for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 20/10/2005

ORAL JUDGMENT

1. The order under challenge in this petition under Article 226 of the Constitution of India is to the order of externment dated 14.03.2005 passed by the respondent no.2, in exercise of powers under Section 56(2) of the Bombay Police Act, externing the petitioner for a period of one year from the city of Surat, Surat Rural and adjoining district of Navsari and also the order dated 16th August, 2005 passed by respondent no.3, the appellate authority in exercise of powers under Sub-section 3 of Section 60 of the Act in

confirming order of externment, as arbitrary, unreasonable and violative of Articles 14, 19 and 21 of the Constitution of India.

2. A show cause notice under Section 59 of the “Act” dated 18.10.2005 was given to the externee on the ground that statement of two witnesses dated 17.10.2004 and 24.10.2004 reveal about illegal and criminal activities of the externee, who indulges into extorting money, by showing weapon to the members of the public and thus, creating fear amongst the public, which result into, occasionally, disruption of normal day-to-day activities of the traders and the residents of the area. The concerned authority has also relied upon on C.R.No.288/2004 for the offences punishable under Sections 323, 324 and 114 of Indian Penal Code and also

under Section 135 of the Bombay Police Act. Collectively, it was found that the prejudicial and illegal activities of the externee, increased day by day and the violent act of the externee result into disruption of the public order and being a head strong person, there was no other remedy for the externing authority to exercise remedy to prevent the activities of the externee, but to exercise power under this Act.

3. After considering evidence on record which included registration of crimes vide C.R.No.288/04 and statement of witnesses dated 17.10.2004 and 24.10.2004 the Competent Authority found it proper to extern the petitioner from the area of Surat City, Surat Rural and district of Navsari and that too for the period of one year only.

The appeal was preferred before the appellate authority under the provisions of Section 60 of the Act raising various contention that the order of externment was passed after substantial delay, the offences registered against the externee were out of personal vengeance and do not reflect criminality of the externee which affect law and order situation in its widest magnitude. It was further submitted that the allegations levelled against the externee were false, vague and without any basis.

However, the appellate authority thought it fit not to interfere with the order of externment authority dated 14.03.2005 and the order was confirmed.

4. Being aggrieved by and dissatisfied by the orders dated 14.03.2005 passed by the

respondent no.2 and 16.08.2005 passed by the respondent no.3 in appeal, the externee has preferred this writ petition and both the orders are assailed and submissions have been canvassed by learned advocate Mr. Saiyed for the externee. The challenge to both the orders is restricted on the ground that considering the allegation levelled in the show cause notice and the reliance placed on registration of crimes under Section 323 and 324 of Indian Penal Code and even statement of witnesses reflected in the order of externment, do not conclusively lead such criminal activities of the petitioner which may affect public peace and tranquility and the externee be a menace to the society if he not extern from the society immediately. The learned advocate has submitted that the narration of the incidents by the anonymous

witnesses are non-specific and unclear and the allegations are of general nature and the registration of crimes relied upon by the concerned authority pertains to the dispute between the private parties and hence, nothing to do with law and order or even the public order. The reliance is placed on the decision reported at 1990 (2) (GLH) 605 of the Division Bench of this Court in support of the above arguments.

5. Therefore, he submitted that both the orders are required to be quashed and set aside as arbitrary and unreasonable and imposes unreasonable restrictions on the externee petitioner to his free and fair movement within the territory of country and also of life and liberty guaranteed under Article 19 and 21 of the Constitution of India.

6. The learned A.P.P. Mrs. Hansa B. Punani submitted that considering the fact that the petitioner alongwith his two brothers have created an atmosphere of terror in the area and different incidents narrated by the witnesses reveal that the externee is a head strong person and often indulges into creating disturbance the law and order situation. She has further submitted that considering the reply of the petitioner, the externing authority has taken a very lenient view by not externing the petitioner for two years and even the adjoining districts from which the petitioner was to extern as per show cause notice, was also considered and ultimately instead of externing the petitioner from Surat City, Surat Ruler, Bharuch, Navsari and Valsad ultimately the

petitioner is externed from Surat City, Surat Ruler and Navsari only, and, therefore, the confirmation of such order of externing authority by the appellate authority also do not warrant any interference of this Court in exercise of powers under Article 226 of the Constitution of India.

7. Considering the submissions of learned advocate for both the parties, and on perusal of show cause notice, an order of externment and the order passed by the appellate authority confirming the order of externing authority collectively and independently reflect reliance placed by the externing authority on registration of mainly two offences under Sections 323 and 324 of Indian Penal Code and statements of witnesses to satisfy itself about the adequacy of material for externing the

petitioner, while exercising powers under Section 56(b) of the Bombay Police Act. A bare perusal of the order of externment reveals the registration of crimes as stated hereinabove in the recital of witnesses about illegal activities carried out by the petitioner on two different dates i.e. 17.10.2004 and 24.10.2004 which is pertaining to the mis-behaviour of the externee with rickshaw driver, i.e. the witness. It also mentions of usage of abusive language, excessive force and the petitioner indulging into fist fighting and thus, creating disruption of traffic in the public place. Incidentally, it also mentions about usage of abusive language etc. Even if prima-facie, the above statements are taken, without prejudice the rights and contentions to the parties, on its true value the statement by itself do not constitute any such eventuality by

which it becomes imperative for the authority to exercise powers of externing the petitioner. As rightly held by the Division Bench of this Court in a decision reported at 1990 (2) GLH 605

> “ The very same principles have been followed in the case of Koli Bhanabhai Bhalabhai Vs. State and in the case of Mohammedumar Vs. Dy.Police Commissioner reported in 1985(1) GLR page 194 (=1985 GLH 281) and 199)=1985 GLH 47) respectively. Applying the principles laid down in the abovesaid decisions, it is clear that the externing authority except stating that “it was apprehended that the petitioner may continue in such illegal activities”, no further exercise has been made in order to find out as to how the continuance of the petitioner in that locality will affect the public peace and tranquility and that how the petitioner will be a menace to the society if he is not externed immediately. Such conclusion has to be arrived at by the externing authority before it passes any order of

externment or otherwise the order of externment will stand vitiated. Such findings as laid down by the abovesaid directions which are “must” as far as cases of externment concerned have not been given in this present case. Mr.B.D.Desai, learned counsel for the respondents is not able to defend the order of externing authority since it lacks the finding as regards the important guidelines set out by various Benches of this High Court.”

Therefore, in the present case also, the law declared by this court, as above is applicable.

8. In view of the above, even registration of crime or the statement of the witnesses do not reflect magnitude of crime committed by the petitioner of such nature which result into disturbance of law and order and therefore, the exercise of powers by the externing authority and confirmed in appeal by the appellate authority is unreasonable, arbitrary and

violative of Articles 14, 19 and 21 of the Constitution of India, since the petition succeeds on the above ground of allegations, which found favour with both the authorities, which have no nexus with disturbance of law and order or a normal social life no other ground is to be dealt with. This petition succeeds and both the orders i.e. order of externing authority dated 14.03.2005 as well the order of appellate authority dated 16.08.2005 confirming the order of externment passed by the externing authority, are hereby ordered to be quashed and set aside. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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